IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRTIETH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

-

WRIT PETITION NO : 25124 of 1999

Between:

1. The Sec' bad Cantonment Board Employees' Cooperating

Housing Society, rep. by its President Sri Mustafa Hussain,

R/o Yakutpura, Hyderabad

2. Mr. K. Shankar S/o Yalaiah, Driver, Cantonment Board
R/o Cantonment Staff Qtrs., Mudfort,
Secunderabad

..... PETITIONERS

AND

1 The Secunderabad Cantonment Board rep. by its Executive Officer,

Secunderabad
2 The Union of India rep. by Secretary, Ministry of Defence, New Delhi
3 The Director-General, Defence Estates, Ministry of Defence (DGDE),

West Block IV, R.K. Puram, New Delhi
4 The Director, Defence Estates, Ministry of Defence,

HQ: Southern Command, Pune-1
5 The Defence Estates Officer, A.P.Circle, Ministry of Defence,

Secunderabad

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the

circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction more particularly one in the nature writ of Mandamus under Art. 226 of the Constitution of India declaring the action of the Respondent No.2 in not considering the lawful claim of the petitioner society in respect of the Trenching Ground Land measuring 29 acres of Land situated in Hasmathpet Village, Secunderabad Cantonment area (civil area) as being unconstitutional, arbitrary and unfair labour practice and consequently direct the respondents to consider the transfer of the Trenching Ground Land to the Petitioner Society in terms of the proceedings bearing No.718/30/L/DE/95 dt:3-11-98 on the file of the Respondent No.1, 4 & 5 while setting aside the impugned letter issued by the Respondent No.2 bearing No.718/30/L/DE/95 dt:3-11-98 so as to consider the claims of the Petitioner society in respect of the transfer of Trenching Ground Land (civil area) without further loss of time.

Counsel for the Petitioners:MR.S.TULASI DAS

Counsel for the Respondent No.1: MR.Y.V.RAVI PRASAD

Counsel for the Respondent Nos.2 to 5: Senior Standing Counsel for Central Government

The Court made the following :

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.25124 OF 1999

ORDER:

The Secunderabad Cantonment Board Employees' Cooperative Housing Society is the first petitioner in the instant Writ Petition. The petitioners pray for a Writ of Mandamus declaring the action of second respondent in not considering the claim of the petitioner society in respect of trenching ground land admeasuring Acs.29.00 as unconstitutional and arbitrary, and for a consequential direction to respondents to consider transfer of said land to the petitioner society.

The Secunderabad Cantonment Board, first respondent acquired land admeasuring Acs.32.00 in Hashmatpet/ Kanajiguda village limits (outside the cantonment) in 1930 or so. Major part of the land is vacant. The petitioner society made a representation to respondents in 1994 for allotment of the said land on market value. It is the case of the petitioners that the Principal Director, Defence Estates, Ministry of Defence, fourth respondent herein by letter dt.4.8.1997 addressed to the Director General, Defence Estates (Lands Section) in Ministry of Defence stated that he has no objection for permanent transfer of the land to the petitioner society on payment of market value. It appears the fourth respondent sent the said communication considering the recommendation of the first respondent. Fourth respondent further requested the third respondent to examine the applicability of Rule 6 of the Secunderabad and Aurangabad Cantonments Property Rules, 1926 in consultation with the Law Ministry.

The petitioner herein filed a writ petition being W.P.No.85 of 1998 seeking a Writ of Mandamus directing the Union of India (second respondent herein) to consider the proposal made by fourth respondent. This Court, by order dt.6.8.1998 disposed of the Writ Petition directing Union of India to consider and dispose of the matter within a period of three months. Thereafter, the Government of India in Ministry of Defence by communication dt.3.11.1999 informed the President of the petitioner society of inability of Ministry of Defence to agree with the proposal for allotment of trenching ground land to the petitioner as Secunderabad is deficient of defence land by more than Acs3.00. Therefore, the petitioner again filed the present Writ Petition seeking a direction as notice hereinabove.

The respondents have not filed any counter affidavit, but learned Standing Counsel for Secunderabad Cantonment Board Sri Y.V.Ravi Prasad appeared and made submissions.

Learned counsel for the petitioners Sri S.Tulasidas vehemently contends that the Secunderabad Cantonment Board is the owner of the land and therefore when it has recommend for allotting the land, for petitioner society on market value, second

respondent cannot refuse the transfer, especially when fourth respondent is also given his no objection. He also submits that the second respondent has considered the matter without taking into consideration all the aspects and therefore the impugned order is liable to be set aside. **Per contra**, learned Standing Counsel for Cantonment Board submits that no power is vested in the Cantonment Board to transfer any land in favour of petitioner society and therefore no direction can be issued to the Government of India. Secondly, he would urge that as observed by Government of India, Secunderabad Cantonment Board is already deficient of land for defence purpose by more than Acs.3,000 and therefore the land cannot be allotted to petitioner society.

The Cantonment Property Rules, 1925 were made in exercise of powers under Section 111 of the Cantonments Act, 1924. Rule 7 of the said Rules reads as under.

7. Transfer by Cantonment Board of Immovable Property:- Immovable Property which vests in and belongs to the Cantonment Board shall not be transferred to any person by the Cantonment Board by way of sale, mortgage or exchange, or otherwise than by lease without a premium, except with the previous sanction of the Central Government and in such manner and on such terms and conditions as the Central Government may, approve:

Provided that if the immovable property is situated beyond the limits of the Cantonment, the view of the State Government which will be ascertained by the Officer Commanding-in-Chief, the Command, shall be taken into consideration by the Central Government before according such sanction.

A plain reading of the above Rule would show that the Cantonment Board has no power to transfer the land by way of sale, mortgage or exchange, except with the previous sanction of the Central Government. When this Court directed the Government of India to consider the proposal in the light of no objection of the fourth respondent, the Government of India considered the same and expressed its inability on the ground that Secunderabad Cantonment Board is deficient by more than Acs.3,000 of land. The recommendation of the Secunderabad Cantonment Board and the accompanying proposal of the fourth respondent are not binding on the second respondent who is alone competent to sanction such transfer. When once the second respondent refused to sanction any transfer, the matter must rest there and this Court cannot give any direction of mandatory nature of allotting the land to the petitioners. It is well settled that a Writ of Mandamus can be issued only to enforce a right vested in a person or when there is a duty on the public authority. Both these are absent in this case and this Court does not find any infirmity or illegality in the action of second respondent refusing allotment of the land to the petitioners.

The Writ Petition is devoid of merit and is accordingly dismissed without any order as to costs.

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(V.V.S.RAO, J)

30.9.2004

bnr

Note:CC in ten days.

(B.O)

bnr

To

1 The Executive Officer, Secunderabad Cantonment Board,

Secunderabad
2 The Secretary, Ministry of Defence, Union of India, New Delhi
3 The Director-General, Defence Estates, Ministry of Defence (DGDE),

West Block IV, R.K. Puram, New Delhi
4 The Director, Defence Estates, Ministry of Defence,

HQ: Southern Command, Pune-1
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Secunderabad

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